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30 MAY 1974

MEMORANDUM FOR: Legislative Counsel
ATTENTION :
SUBJECT : Comments on S. 3418--Federal Privacy Board

1. Because of the length of this bill, as well as the possibility that the Agency would be exempt from its provisions, we are setting forth in this memorandum a few comments on potential problem areas and are attaching as an annex a summary of its detailed provisions...

2. The bill would establish a Federal Privacy Board, with five members appointed by the President and confirmed by the Senate. The Board would publish annually a Data Base Directory of the United States, containing data on all personal information systems. Several powers for implementing the provisions of the bill are given to the Board, and it would report annually to the Congress and the President.

3. Detailed requirements and procedures for Federal agencies, state and local governments, and all non-governmental organizations are set forth, and there are several special requirements for Federal agencies only. All covered organizations must give annual notice to the Board and the information required is very detailed. Organizations must notify persons on whom they have information of this fact and obtain their consent for certain transactions, and the individuals can correct or update this information...

4. The Act would not apply to personal information systems maintained by a Federal agency whose head determines that release of such information would seriously damage the national defense. Also exempted are criminal investigatory files of law enforcement agencies (with some caveats) and the files of the press and news media (except for files on their employees).

5. There is a special clause forbidding any organization to require an individual to disclose his social security number in connection with commercial and other transactions.

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6. There are the usual sections on criminal penalties and civil remedies, as well as definitions of key terms.

7. If the Director can in fact exempt the Agency's personal information files and records from the provisions of this Act, then it presents no difficult problem, as there do not appear to be any records the disclosure of which would not damage the national defense.

8. On the other hand, if for any reason the Agency should be determined to be subject to this Act, with all the requirements for notification and reporting to the Federal Privacy Board, the general public, and to the individuals on whom the Agency maintains personal information, it would be in deep trouble. For example, there is the requirement affording any foreign national, whether or not residing in the United States, the same rights under this Act as American citizens would have. There is the maintenance (internally) of lists of all persons (Agency employees) having regular access to the personal information in the system. Annually, the Agency would have to prepare the very detailed notice for the Board, including information on the procedures whereby an individual may be informed of information on him and how he can contest its accuracy. Very little could be done with Agency-held personal information without the consent of the subject individual and he would be entitled to know the source of such data. In other words, all these detailed provisions would hamstring the Agency in operating its information systems and would endanger the security of its operation.

SIGNED

Chief, Information Systems Analysis Staff

STAT

Attachment:
Annex

ISAS:CPB:JCS:slh
(29 May 1974)

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Comments on S. 3418--Federal Privacy Board

1. This bill would establish in the executive branch a Federal Privacy Board, consisting of five members appointed by the President and confirmed by the Senate. These members would be from the public at large, exclusive of officials or employees of the U. S. Government. They would be paid as GS-18's and would be forbidden from engaging in any other employment during their three-year terms.

2. The Board would publish an annual Data Base Directory of the U. S. containing data on each personal information system. The Board would also consult with heads of departments/agencies in implementing the provisions of the Act, make rules to assure compliance with the Act, and conduct research activities as may be necessary to implement the Act and assist organizations in complying with its requirements.

3. The Board would be authorized as follows:

a. to be granted admission at reasonable hours to premises where any information system, computers, or equipment or recordings for automatic data processing are kept, and may compel the production of documents relating to such information system or processing;

b. to order an organization found to be violating the Act to cease and desist from such violation;

c. to delegate its authority with respect to information systems within a State (or D. C.) when satisfied that the State is enforcing the Act satisfactorily;

d. to hear petitions for exceptions or exemptions to the Act, (only authorized response is recommendation of action to Congress); and

e. to the fullest extent possible consult with heads of departments/agencies of Government in implementing the functions of the Board.

4. The Board would report annually on its activities to the Congress and to the President.

5. Any Federal agency, State or local government, or any organization maintaining an information system including

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personal information would be responsible for the following:

- a. collect, maintain, use and disseminate only personal information necessary to accomplish a proper purpose of the organization;
- b. get the information from the subject directly when possible;
- c. have categories of information for use in confidentiality requirements and access controls;
- d. maintain information with accuracy, completeness, timeliness and pertinence to assure fairness to subject;
- e. make no dissemination to another system without specifying security and use limits, and determining that it is likely these will be observed;
- f. transfer no personal information outside the United States unless a treaty or executive agreement guarantees compliance with this Act;
- g. afford any foreign national, whether residing in the United States or not, the same rights under this Act as U. S. citizens would have;
- h. maintain a list of all persons having regular access to personal information in the information system;
- i. maintain complete records of access to personal information by anyone not having regular access authority;
- j. establish rules of conduct and inform each person involved in any aspect of running the system of the requirements of this Act;
- k. establish safeguards to reasonably assure the system's security;
- l. on receipt of written complaint, take steps to remove complainant's name from any mailing list of the organization; and

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m. collect no personal information concerning religious or political beliefs, affiliations, and activities unless authorized by law.

6. Any such organization maintaining an information system that disseminates statistical reports or research findings based on personal information drawn from the system would have to make available to any data subject or group the methodology necessary to validate statistical analyses, and make no such materials available for independent analysis without guarantees that no personal information would be used in such a way as might prejudice judgments about any data subject.

7. No Federal agency should:

a. require any individual to disclose for statistical purposes any personal information unless such disclosure is required by law and the individual is informed of such requirement;

b. request any individual to voluntarily disclose personal information unless such request is specifically authorized by law and the individual is advised that such disclosure is voluntary;

c. make available to any unauthorized Federal employee any study or reports derived from any file containing personal information except those prepared, published and made available for general public use; or

d. publish statistics of taxpayer income classified on the basis of a coding system for the delivery of mail.

8. Any such organization (Federal, State or other) maintaining an information system for personal information would have to:

a. give annually to the Federal Privacy Board notice of the existence of such a system;

b. give public notice annually of the existence and character of such system (Federal organizations in the Federal Register, other organizations in local media);

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c. in case of a new system or substantial modification of an existing system, give public notice and notice to the Federal Privacy Board in not less than three months; and

d. be sure that the public notice includes the following:

- (1) the name of the system;
- (2) the general purpose of the system;
- (3) the categories of personal information and approximate number of persons on whom information is maintained;
- (4) the categories of information maintained, confidentiality requirements, and access controls;
- (5) the organization's policies regarding information storage, duration of retention of information, and purging of such information;
- (6) the categories of information sources;
- (7) a description of types of use made of the information, including all classes of users, and organizational relationships among them;
- (8) the procedures whereby an individual may be informed if information on him is in the system, how he can gain access to the information, and how he can contest the accuracy, completeness, timeliness, pertinence, and necessity for retention of the information;
- (9) the procedures whereby an individual or group can gain access to the information system used for statistical reporting or research in order to subject them to independent analysis; and

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- (10) the business address and telephone number of the person immediately responsible for the system.

9. Any organization maintaining personal information should:

- a. inform any individual asked to supply personal information whether it is required by law or may be refused, and the specific consequences of providing or not providing the information;

- b. request permission of a data subject to disseminate all or part of the information to another system not having regular access authority, and indicate the use intended and the specific consequences to the individual;

- c. grant to a data subject the right to inspect (1) all personal information about him, (2) the sources of the information, (3) and who receives the information;

- d. make the disclosures required by the Act to data subjects (1) during normal business hours, (2) in person or by mail, on proper identification, at reasonable standard charges for document search and duplication, and (3) permit the data subject to be accompanied by one person of his choosing;

- e. when advised that a data subject wishes to in any way modify the information about him in the system, the organization shall:

- (1) investigate and record the current status of such information;
- (2) purge any incomplete, inaccurate, nonpertinent, nontimely, unnecessary, or unverifiable information;
- (3) include in the record a statement of the data subject as to his position on any disputed portion of the information;

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- (4) in any dissemination of the disputed information, note that fact and include the subject's statement;
- (5) make plain to each individual his right to make a request under this paragraph;
- (6) on subject's request, notify past recipients of any purging or correction of the information; and
- (7) advise the individual of his right to assistance from the Federal Privacy Board in case of unresolved disputes.

10. Each organization maintaining a personal information system when this Act is enacted would have to notify by mail each data subject of that fact, including (a) the type of information held and its expected uses, and (b) the name and address of the place where he could obtain the personal information pertaining to him in the system.

11. Data subjects of archival-type inactive records should be notified by mail of the reactivation of such files within six months after enactment of this Act.

12. Certain specific subsections of this Act would not apply to any organization which maintains an information system disseminating statistical reports based on personal information drawn from that system (or those of other organizations); purges the names, numbers or other identifying particulars of individuals; and certifies to the Federal Privacy Board that no inferences may be drawn about any individual.

13. This Act would not apply to personal information systems:

- a. to the extent that such system is maintained by a Federal agency whose head determines that the release of the information would seriously damage national defense;

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b. which are part of active criminal investigatory files of law enforcement agencies (except where the files have been maintained longer than necessary to begin criminal prosecution); or

c. which are maintained by press and news media (except information relating to employees of such organizations).

14. It would be unlawful for any organization to require an individual to disclose his social security number in connection with any commercial activity, or to refuse to extend credit, make a loan, or enter into any other business/commercial relationship with an individual who does not disclose such number, unless disclosure is required by law. (This does not apply in the administration of the insurance programs under Title II of the Social Security Act.)

15. Among the miscellaneous provisions of the Act are definitions for several key terms used therein, such as "information system," "personal information," "data subject," "organization," "purge," and "Federal Agency." Also, no organization could reveal any professional, proprietary or business secrets except as required under the Act.

16. Criminal penalties (fine up to \$10,000, imprisonment not more than five years, or both) are prescribed for an organization or a responsible officer of same who (a) keeps an information system without notifying the Federal Privacy Board or (b) issues personal information in violation of the Act.

17. Civil remedies include the following:

a. the Attorney General (on advice of the Board or any aggrieved person) may bring a court action against any alleged violator or potential violator of the Act; and

b. any person who violates the Act is liable to an aggrieved person for actual damages, punitive damages (when appropriate), and reasonable attorneys' fees. The United States consents to be sued under this section of the Act.

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18. Any individual who is denied access to information required to be disclosed under this Act is entitled to judicial review of the grounds for such denial. The District Courts of the United States have jurisdiction in such cases.

19. The effective date would be one year after enactment of this Act.

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